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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)**

Estate of ROBERT E. ROBERTS,
Deceased.

C060907

(Super. Ct. No. PP20060081)

ELIZABETH BRADLEY ROBERTS,

Petitioner and Appellant,

v.

PAUL N. ROBERTS et al.,

Objectors and Respondents.

Elizabeth Bradley Roberts appeals pro se from the court's determination, following a court trial, that she has no community property interest in certain real property (the house) owned by the deceased, Robert E. Roberts, to whom she was married at the time of his death.¹

¹ Hereafter, for simplicity, we will refer to Elizabeth Roberts, Robert Roberts, and his children, Erin Breyman and Paul Roberts, by their first names.

Elizabeth claims on appeal the court conducted the trial in violation of a bifurcation order, and made various evidentiary errors, chiefly in precluding testimony concerning the value of the house and the proceeds of its sale. We find no error and shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Elizabeth and Robert were married for a little less than two years--from June 15, 2004, until the time of Robert's death on March 19, 2006.

At the time of their marriage, Elizabeth and Robert lived in the house he owned in Pollock Pines (the house) that he had purchased when he was single. The parties stipulated Robert bought the house on December 29, 1999. He had always held title to the house as his sole and separate property.

Before Robert married Elizabeth, two deeds of trust were recorded against the house, both from Robert "as a sole and separate property" in favor of a bank. The first was recorded on July 7, 2003, the second on June 11, 2004.

After Robert died, his will was admitted to probate and his children, Erin and Paul, became the co-executors of his estate. Elizabeth filed a petition in the pending probate proceeding for a determination of her community property interest in the house. (Prob. Code, §§ 850, subd. (a)(2)(C), 13650, subd. (a).)²

² Undesignated statutory references are to the Probate Code.

The procedural history leading to the court trial on Elizabeth's claim to a community property interest in the house (or the proceeds of its sale) is somewhat muddled, given the state of the record on appeal. For example, the record on appeal contains none of Elizabeth's petitions for a determination that she has a community property interest in the house.³ At some point, Elizabeth reached an agreement to settle her claim(s) against the estate, but reserved for later trial her claim to a community property interest in the house and/or in the proceeds from its sale. An order bifurcating the determination of "the issue concerning construction of the settlement agreement from the remaining issues raised in this litigation" was entered in February 2008.

At a trial setting conference in June 2008, counsel for the executors indicated he "will appear generally and waive" any defense based on the settlement agreement so that "we can set [the matter] for a contested hearing on the petition to determine community property interest." The court announced that "there is a potential claim or an unwillingness to waive a potential claim against the real property that's the subject of the claim of community property interest" and ordered that the matter be determined as a civil action: "The Court refers this

³ Elizabeth's original "Petition to Determine Succession to the Real and Personal Property of the Estate" was filed on October 4, 2006; she filed a second petition relating to her claim of "Community Property Interest" in the house on July 12, 2007, and an amended petition to determine her community property interest in the house on November 19, 2007.

entire case to the civil department for resolution. [¶] The Court vacates the trial date for today. We'll start over with the regular civil litigation and go from there."

In September 2008, Elizabeth's amended petition to determine the community property interest was set for a court trial on October 27, 2008. Trial proceeded on that date.

Elizabeth testified at trial she moved into the house with Robert in October 2003. After she moved in, she began giving Robert her monthly social security checks to deposit into his account, but she did not know how he used the money.

Elizabeth also testified Robert took out a second mortgage on the house, to fix up the garage and to finance a trip for the two of them to Alaska. Questioned by the court concerning her signing of the second mortgage, Elizabeth testified that before she and Robert married, she cosigned a contract with two contractors who performed improvements on the garage.

During Elizabeth's testimony, her counsel attempted unsuccessfully to elicit her opinion about the value of Robert's house, whether it increased in value after she moved in or after the garage was improved, the value of her contribution to the marriage or to the value of the house, and the price for which the house sold after Robert's death. The court found Elizabeth's testimony on these points to be without foundation.

Elizabeth's daughter, a former licensed mortgage broker, testified that (in her opinion) the house was worth between

\$325,000 and \$350,000 in 2003; in 2006, it was worth between \$500,000 and \$525,000. She also testified she mailed payments made by Elizabeth on the second mortgage after Robert's death.

After Elizabeth finished presenting her case, the executors moved for judgment. (Code Civ. Proc., § 631.8.)

The court granted their motion: "I have heard no credible evidence that [Elizabeth] . . . signed any loan documents. If she seemed to testify on direct examination that she did, under examination from the Court she testified that she didn't. I find that there's a lack of any evidence that she participated in the acquisition of the second trust deed. The only evidence that I have heard in this case is she turned over her small Social Security check to [Robert] and he put it in a checking account. I have heard no testimony as to which account, if any, was used to pay off the loan. And during this rather brief marriage, any loan payments that were made I'm sure reduced the principal in a de minimus amount, at most, even if the Court were to look at the evidence most favorable to [Elizabeth] in this case. But I have heard no evidence that [her] Social Security payments paid off any of these deeds of trust. I find that there's been a lack of evidence by [Elizabeth]. I find in this case that [Robert] owned the Pollock Pines property before marriage, he owned it during marriage, and his estate owned it after marriage, [and] that there was no community property interest by [Elizabeth]."

DISCUSSION

I. Applicable Standards of Review

On appeal, a judgment or order of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. Thus, an appellant has the burden to affirmatively demonstrate reversible error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 977-978.)

The appellant's burden to follow the California Rules of Court⁴ includes (1) presenting each point separately in the opening brief under an appropriate heading showing the nature of the question to be presented and the point to be made (rule 8.204(a)(1)(B), (2)(A)); (2) providing an adequate record that affirmatively demonstrates error (rule 8.120 et seq.); (3) supporting all appellate arguments with legal analysis and appropriate citations to the material facts in the record (rule 8.204(a)(1)(C); and (4) showing exactly how the error caused a miscarriage of justice (rule 8.204(a)(2)(A); Cal. Const., art. VI, § 13). If the appellant fails to comply with any of these rules, the contentions are forfeited. (Rule 8.204(a)(1)(B); *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240 & fn. 16.)

⁴ Further rule references are to the California Rules of Court.

Elizabeth is not exempt from the rules governing appeals because she is representing herself in propria persona. A party representing herself is to be treated like any other party and is entitled to the same, but no greater, consideration than other litigants and attorneys. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247; see *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121 [self-represented parties are held to "the same 'restrictive procedural rules as an attorney'"].)

With these rules in mind, we turn to Elizabeth's contentions of error.

II. The Court Did Not Err in Proceeding with Trial

We consider first Elizabeth's suggestion on appeal that the trial court erred and "overruled" the February 2008 bifurcation order, or allowed it to be "thrown out," when it proceeded with a court trial on her claim of a community property interest in the house and/or sale proceeds.

The record shows that Elizabeth's amended petition to determine the community property interest was set for a court trial on October 27, 2008. But when the matter was called, Elizabeth's counsel announced that, in his view, the February 2008 bifurcation order "allowed [Elizabeth] to first determine whether or not the settlement agreement would prevent [her] or preclude [her] from filing a claim for monetary damages" and, because the bifurcation "order was never set aside," he was "not prepared" to present evidence on Elizabeth's community property

claim. Counsel stated: "We have to hire an appraiser. We have to get the facts and figures and so forth." He asked for a continuance.

The court denied counsel's request. First opining that it did not "see how the value of the property and an appraiser has any involvement in the issue of whether there is an interest in the property," the court then noted that the matter has been "set [for trial] since September" and the bifurcation order "was clearly amended at the case management conference when this case was set for hearing today."

On appeal, Elizabeth argues she was denied due process by the court's order that counsel proceed with the presentation of evidence to support her petition, and its denial of a continuance. She asks for a new trial.

Elizabeth has not shown reversible error. In civil cases, assigned trial dates are firm, continuances are disfavored, and parties and their counsel must regard the trial date as certain. (Rule 3.1332(a) & (c).) A party seeking a continuance must make the request by a noticed motion or an ex parte application, with supporting declarations, as soon as reasonably practical once the need for the continuance is discovered. (Rule 3.1332(b).) The trial court "may grant a continuance only on an affirmative showing of good cause requiring the continuance." (Rule 3.1332(c).) The unavailability of a party or of trial counsel because of death, illness, or other excusable circumstances, may

indicate good cause for a continuance. (Rule 3.1332(c)(2) & (3).)

In ruling on a motion for continuance, the trial court must consider all relevant facts and circumstances, including whether previous continuances were granted; the availability of alternative means to address the problem that gave rise to the motion for a continuance; prejudice that parties or witnesses will suffer as a result of a continuance; and whether the interests of justice are best served by a continuance. (Rule 3.1332(d).)

The decision whether to grant a continuance is within the trial court's sound discretion and will not be disturbed on appeal unless the decision is arbitrary, capricious, or patently absurd and results in a miscarriage of justice. (*Jensen v. Superior Court* (2008) 160 Cal.App.4th 266, 271; *In re Karla C.* (2003) 113 Cal.App.4th 166, 180.) In evaluating the propriety of the trial court's ruling, we consider the information the parties provided to the court prior to the ruling. (*Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753, 761.)

Here, the record shows the entire matter and thus all remaining issues were set for trial in September 2008 for the following October 27.⁵ As Elizabeth's counsel did not avail himself of any of the procedures required to support his request

⁵ Elizabeth also acknowledges on appeal that the court in late June 2008 ordered that "this entire case [shall go] to the civil department for resolution."

for a continuance, the court did not abuse its discretion in denying it. Nor did the trial court abuse its discretion in disregarding counsel's insistence that the bifurcation order did not require him to present evidence on Elizabeth's community property claim, in light of the court's finding that the bifurcation order "was clearly amended at the case management conference when this case was set" for trial.

Finally, Elizabeth suggests the court erred in requiring her counsel to proceed after it became "aware that [he] did not get a copy of [the executors'] trial brief." There was no error: The record indicates counsel was served with the brief, but he failed to retrieve it from his post office box.

III. Elizabeth Has Shown No Reversible Error Occurred at Trial

Elizabeth contends she was "treated most unfairly and deserve[s] a new trial" because the judge "repeatedly blocked [her] attempts to testify on critical and material questions of fact" Specifically, she contends the court erred in refusing to allow her to offer her opinion of the value of the house, her contributions to the increase in that value, and what percentage she believes her community property interest to be; erred in refusing to allow her daughter to testify as to the amount of the second mortgage; and erred in failing to require the executor to testify whether he knew the amount and location of the proceeds from its sale. The court rejected this evidence as without foundation or relevance to the issue of whether she has a community property interest in the house.

There was no error.

The Probate Code states that "[u]pon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent" and each spouse has the right of testamentary disposition over his or her half of the community property. (§ 100, subd. (a); *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 756.) As relevant here, the Probate Code defines "community property" as "[c]ommunity property . . . acquired during marriage by a married person" (§ 28, subd. (a).) The surviving spouse may bring a petition for a determination of her interest in community property. (§ 13656, subd. (c).) Whether the property of the deceased is community or separate property for purposes of distribution is a question of fact. (*In re Gartland's Estate* (1931) 114 Cal.App. 269, 271.)

The trial court found that Robert owned the house before he married Elizabeth, he held it throughout their marriage as his separate property, and it was never transmuted into community property. That finding is supported by substantial evidence: Deeds of trust showed Robert acquired the property and encumbered it twice "as a sole and separate property" before he married Elizabeth.

Elizabeth nonetheless attempted to show at trial that, by virtue of her giving her Social Security benefits to Robert, some portion of the increase in value of the house is attributable to her. She is mistaken. True, when community

funds are used to assist in the purchase or to reduce an encumbrance on a separate asset, that application of community funds can result in what amounts to co-ownership of the asset, or a claim for reimbursement. (See *In re Marriage of Wolfe* (2001) 91 Cal.App.4th 962, 967, 972.) But, here, there was no evidence that there was any community property at all: There was no evidence that either Robert or Elizabeth had any earnings during the course of their marriage that created community property. Elizabeth's Social Security benefits were her separate property (see *In re Marriage of Nizenkoff* (1976) 65 Cal.App.3d 136, 139), and Elizabeth could have, but did not, present evidence that the benefit checks she signed over to Robert went into an account from which the mortgage(s) were paid. (Cf. *In re Marriage of Tallman* (1994) 22 Cal.App.4th 1697, 1698 [wife contributed separate funds to pay off debt on family home].)

In light of her failure to show that community property assets were used to pay for the house, or that she made any contribution to payment of the mortgage obligations on it, Elizabeth cannot have been prejudiced by the court's refusal to admit testimony as to the value of the house, its sales price, or the proceeds of its sale.

DISPOSITION

The judgment (order) is affirmed. Respondents are awarded their costs on appeal. (Rule 8.278(a)(2).)

_____, BUTZ, J.

We concur:

_____, SCOTLAND, Acting P. J.*

_____, ROBIE, J.

* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.